Supreme Court, U.S.
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No. 05-587

IN THE

Supreme Court of the United States

MARK REED,

Petitioner,

v.

MICHAEL BALDWIN,

Respondent.

On Petition for Writ of Certiorari
To the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

DAVID K. HUSKEY, ESQ.
Lead Counsel
Placer County Counsel's Office
175 Fulweiler Avenue
Auburn, CA 95814
Telephone: (530) 889-4044

QUESTION PRESENTED FOR REVIEW

In this 42 U.S.C. Section 1983 action, Respondent Michael Baldwin claims that Petitioner, Deputy Mark Reed used excessive force in violation of Mr. Baldwin's Fourth Amendment rights. Mr. Baldwin asserts that immediately after Deputy Reed entered the Baldwin residence to perform a search for suspected indoor marijuana cultivation, Deputy Reed encountered Mr. Baldwin and ordered him to the floor. Mr. Baldwin complied with the order. Mr. Baldwin claims that as he lay face down on the floor, Deputy Reed placed the barrel of his gun to the back of Mr. Baldwin's head for approximately 20 seconds before handcuffing Mr. Baldwin. Mr. Baldwin suffered no physical injury but was in fear for his life due to the possibility of accidental discharge of Deputy Reed's gun. Shortly thereafter, the deputies performing the search secured the Baldwin residence. Mr. Baldwin does not claim that Deputy Reed mistreated him in any other fashion or used any other force against him. The Ninth Circuit affirmed the district court's denial of Placer County Sheriff's Deputy Mark Reed's motion for summary judgment based upon the qualified immunity of good faith.

Two questions are presented:

1. In analyzing the preliminary issue on a question of qualified immunity in an excessive force case, whether the officer's conduct violated the Fourth Amendment, did the Ninth Circuit fail to account for governmental interests that justified the application of force during a residential search for drugs, at a point before the residence and the occupants were secured, and instead improperly focus on the profession of the suspect (dentistry) to conclude that officers performing such drug searches face minimal, if any, exigencies that might justify the use of force?

2. In analyzing the second issue on a question of qualified immunity, whether clearly established law reasonably informed the officer that the conduct in question was unlawful, did the Ninth Circuit's opinion that there is a clearly established right "to be free from battery by gun-wielding officers" ignore controlling Supreme Court precedent by formulating "clearly established law" at so general or abstract a level that the notice requirement was rendered meaningless?

LIST OF PARTIES

Petitioner

Mark Reed of Auburn, California.

Respondent

Michael Baldwin, of Carmichael, California

The following parties named in the caption of the underlying action have not petitioned for review: Placer County, Placer County Sheriff's Department, Brian Whigam, Keven Besana, Ron Goodpaster, Stephen L. D'Arcy and Tracy Grant.

Georgia Chacko was a prevailing party.

Jeff Potter has filed a separate petition for certiorari.

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OPINIONS BELOW

The original opinion of the United States Court of Appeals for the Ninth Circuit is reported at *Baldwin v. Placer County*, 405 F.3d 788 (9th Cir. 2005). (App., *infra*, A.) The Ninth Circuit amended its opinion and denied *en banc* review on August 8, 2005, 418 F.3d 966 (9th Circuit 2005). (App., *infra*, B.) The Ninth Circuit affirmed the April 2, 2004 unreported decision of the United States District Court for the Eastern District of California, D.C. No. CV-01-01177 - MCE. (App., *infra*, C.)

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1). The Ninth Circuit Court of Appeals entered its judgment on April 19, 2005. Following the denial of the petition for rehearing and rehearing en banc, the Ninth Circuit entered an amended judgment on August 8, 2005 and stated that it would not entertain any further petitions.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

1. In the summer of 1998, Petitioner, Deputy Mark Reed, learned from a confidential informant that Respondent Michael Baldwin and his then wife Georgia Baldwin (now Georgia Chacko) may be growing marijuana. Deputy Reed put the confidential informant in contact with Sergeant Keven Besana, the supervisor of the Placer County Sheriff Dept.'s Marijuana Eradication Team (MET). Deputy Reed was not a member of MET.

On September 16, 1998, MET Deputies Jeff Potter and Ron Goodpaster searched the garbage can placed out for collection in front of the Baldwin residence in Loomis, California. Deputy Potter found marijuana that the Baldwins assert was .08 grams of dried, burned plant material including stems, leaves and a seed, "barely recognizable" as marijuana, wrapped in burnt tissue paper. In his affidavit in support of the search warrant for the Baldwin residence, Deputy Potter described the material he found during the garbage search as "marijuana leaves and stems recently cut from a mature marijuana plant. The marijuana was fresh, green and still moist."

Based upon the marijuana discovered during the garbage search, the confidential informant's statement and other disputed corroborative evidence, Deputy Potter sought and obtained a search warrant for the Baldwin residence on September 23, 1998. Deputy Reed had nothing to do with obtaining the search warrant other than passing the information he received from the confidential informant on to Sgt. Besana.

In the early morning hours of September 23, 1998, Deputy Reed assisted the MET officers in entering, securing and then searching the Baldwins' home pursuant to the search warrant obtained by Deputy Potter. The deputies

entered the home through the unlocked front door. The Baldwins did not hear the deputies knock and announce themselves, and therefore assert that no knock and announcement occurred.

Michael Baldwin, who had been beneath the house tending to approximately 146 marijuana plants encountered Deputy Reed in the living room. Deputy Reed pointed his gun at Mr. Baldwin, who was wearing nothing but a t-shirt, and ordered him to the floor. Mr. Baldwin complied immediately.

Mr. Baldwin says that while he was lying face down on the floor, Deputy Reed put his knee on Baldwin's lower back, with minimal force, and put a gun to the back of his head for approximately 20 seconds before handcuffing him. Mr. Baldwin has no complaints about Officer Reed's conduct during that encounter other than the placing of the gun to the back of his head. Mr. Baldwin concedes that he suffered no physical injury during the search, only the emotional distress occasioned by having the gun placed to the back of his head before he was handcuffed.

2. On October 12, 2001, Georgia Chacko and Michael Baldwin filed their First Amended Complaint alleging, among other claims, a Section 1983 claim against Deputies Jeff Potter, Tracy Grant, Ron Goodpaster, Mark Reed and Sgt. Keven Besana for alleged Fourth Amendment violations. They alleged that Deputy Potter committed judicial deception and committed excessive force against Chacko, and that Deputy Reed committed excessive force against Baldwin. They alleged that all of the named officers conspired to violate their Fourth Amendment rights by committing judicial deception, and that they all used excessive force and conducted an unreasonable search. They alleged a *Monell* claim to the effect that Placer County had a policy, custom and practice of similar Fourth Amendment

violations. They further alleged that Deputy Brian Whigam violated their due process rights by giving false testimony in a preliminary hearing that led to the unsuccessful criminal prosecution of Baldwin and Chacko for alleged cultivation of marijuana for sale. They also alleged that Undersheriff Steven D'Arcy defamed them in a press release following their arrest. They alleged a RICO violation and claims for equitable relief. They also alleged pendent state law claims. Because of the Section 1983 claims, 42 USC Section 1343 (3) conferred jurisdiction over their complaint in the United Stated District Court.

On May 20, 2003, all defendants filed a motion for summary judgment as to all claims based upon the plaintiffs' failure to respond to discovery. However, the plaintiffs responded to discovery before the motion was heard. Therefore, the District Court denied the motion in part, but granted it as to the defamation claim against Undersheriff D'Arcy.

On December 7, 2003, the remaining defendants filed a second motion for summary judgment. The District Court heard the motion on January 26, 2004 and took it under submission. On April 2, 2004, the District Court issued its order granting in part, and denying in part the motion for summary judgment.

The April 2, 2004 order took note that Baldwin and Chacko had abandoned their RICO claim, their pendent false arrest and false imprisonment claims and their claims for equitable relief. The Court granted summary judgment in favor of defendant Brian Whigam as to the due process claim arising out of his testimony at a preliminary hearing. The Court also granted summary judgment in favor of all deputies other than Potter and Reed on plaintiffs' excessive force claims and in favor of all deputies on plaintiffs' unreasonable seizure claims.